

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VIRLACE LEE HUNT, Individually and as
Natural Grandmother and Adoptive Mother and
next friend of, E. M., L. M. and S. M.,
minors,

Plaintiffs.

vs.

CIV-03-0585 JP/LFG

VIRGINIA K. GREEN, individually, and
R. MICHAEL WESTBAY, individually.

Defendants.

DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR PROTECTIVE ORDER

Comes Now Defendants, by and through their counsel, Elizabeth L. German of Brown and German, and state as follows in response to Plaintiffs' Motion for Protective Order.

Plaintiffs seek to prevent the deposition of the minor Plaintiffs, E.M. and L.M., in this case. (Defendants did not seek to depose the youngest Plaintiff, S.M.)

In support of their Motion for Protective Order, Plaintiff cites no case law but attaches a letter from Solveig Maerki, MS, indicating her opinion that being deposed would "jeopardize their psychological healing."

While Defendants have no desire to jeopardize any healing being experienced by these children who are ages 11 and 9, Defendants submit that they are entitled to take the depositions of Plaintiffs in this case. As a civil case, Plaintiffs chose to participate (or their adult guardian chose to have the children participate) and to seek damages for actions and omissions alleged against the Defendants. Defendants should therefore be allowed to depose the children.

Upon receipt of this Motion Defense counsel advised counsel for Plaintiffs that she would forego deposing the children if he agreed that they would not be called to testify at trial and if a brief informal meeting between defense counsel and children could be arranged. Defense counsel also indicated that if the children might be called to testify at trial, she would be amenable to conditions relating to the depositions which might make the children more comfortable such as not having the named Defendants present and allowing the children's therapist to attend. Defense counsel is amenable to considering other conditions upon the deposition of the minor Plaintiffs in an effort to minimize any trauma or stress related to being deposed.

Defendants respectfully ask this Court to deny Plaintiffs' Motion for Protective Order and to allow the depositions to take place, upon such terms and conditions as set forth by the Court.

Respectfully submitted:

Electronically filed 2/13/04
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I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record this 13th day of February, 2004.

Electronically filed 2/13/04
ELIZABETH L. GERMAN